

The National Credit Union Administration Board, in its capacity as Conservator of Texans Credit Union (“NCUA”), files this Original Complaint against Defendant David Addison (“Addison”) and alleges as follows:

1. Since its formation in 1953, Texans Credit Union (“TCU”) enjoyed a longstanding reputation as an established, conservatively-managed credit union. For over 50 years, TCU maintained a stable profit margin by offering its members traditional credit union services. In 2011, however, faced with rapidly declining liquidity and a growing book of troubled assets, TCU found itself nearly insolvent, and NCUA placed the credit union in conservatorship.

2. TCU's financial downturn began after Addison was hired as its Chief Executive Officer in 2003. Almost immediately, Addison began making drastic changes to the credit union, changing longstanding internal policies and fundamentally shifting its overall business focus. As a result of Addison's leadership, TCU departed from offering predominantly

traditional credit union services, and instead invested significantly in several risky businesses and commercial loan participations that were not typically associated with credit unions. Addison's goal was to transform TCU from a conservative credit union into an expanded, multi-layered financial conglomerate, whose assets and services were more akin to a publicly-traded financial institution or bank, than a member-owned, not-for-profit regional credit union. In doing so, Addison exposed TCU to an extraordinary level of risk, while ignoring multiple warnings from TCU's general counsel, outside advisors, and even TCU's federal and state regulators. Moreover, having worked in the credit union industry for years prior to joining TCU, Addison knew that his actions violated certain credit union laws, as well as his fiduciary duties to TCU and its members. Addison's gamble with TCU's funds in these high-risk, largely unstable businesses and investments is what caused TCU's ultimate financial downfall.

3. One non-traditional business acquisition in particular stands out as a grossly imprudent financial mistake for TCU. As TCU began to experience a substantial increase in loan delinquencies and a 75% drop in net income, Addison inexplicably orchestrated TCU's acquisition of a broker-dealer and investment advisory business that was on the brink of its own financial collapse.

4. In mid-2007, Addison targeted OBS Holdings, Inc. ("OBS Holdings") and its subsidiaries Online Brokerage Services, Inc., ("Online Brokerage Services") and OBS Financial Services, Inc., ("OBS Financial") (collectively, "OBS"), as a potential acquisition for TCU. In orchestrating the OBS acquisition, however, Addison was grossly negligent and breached his fiduciary duties to TCU by purposefully ignoring, concealing and/or manipulating information regarding OBS. As a result, the TCU Board ultimately approved the OBS acquisition in total ignorance of material information Addison obscured regarding OBS's true financial condition

and the impact the acquisition would have – and ultimately did have – on TCU’s financial well-being.

5. During TCU’s due diligence review of OBS, outside valuation experts repeatedly informed Addison of OBS’s financial problems and its negative attributes. The valuation experts advised Addison that OBS was substantially overvalued, and only worth half of its \$15 million price tag. Addison ignored these warnings, concealed this information from the TCU Board, and instead directed TCU executives to continue with the OBS acquisition.

6. In addition, TCU’s in-house counsel advised Addison that the OBS acquisition was impermissible under Texas law. Addison ignored that advice and concealed this important fact from TCU’s Board. Despite knowledge that the OBS acquisition would cause TCU to be in violation of Texas law, Addison proceeded with the acquisition, and directed that a statutorily required legal opinion be drafted *after* the OBS acquisition.

7. Finally, in order to secure approval of the OBS acquisition, Addison represented to the TCU Board that OBS would become a direct subsidiary of TCU, and that following the acquisition, TCU would own an 80% interest in OBS. Despite making these representations to the TCU Board – who later approved the OBS acquisition based on these representations, among others – on the eve of closing, Addison instead directed TCU’s wholly-owned commercial lending credit union servicing organization, Credit Union Liquidity Services, LLC (“CULS”), to acquire and fund the OBS acquisition in exchange for 95% ownership of OBS.<sup>1</sup> CULS (through a direct subsidiary) became 95% owner of OBS following the merger, significantly increasing CULS’s – and thus TCU’s – risk exposure. As a result of Addison’s misrepresentations, the TCU Board, the CULS Board, and even CULS’s president were unaware that CULS, and not

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<sup>1</sup> CULS, as TCU’s wholly owned subsidiary and its commercial lending credit union service organization (or “CUSO”), ultimately became the parent organization of OBS.

TCU, would be funding the acquisition, or that ownership interest in OBS was increased to a risky 95%.<sup>2</sup> Shortly after the OBS acquisition, TCU loaned millions of dollars to CULS to, among other things, subsidize OBS's operating costs. By restructuring the OBS acquisition and directing large cash infusions from CULS into OBS, Addison was able to "prop up" what some believed to be his career escape plan, should TCU ultimately fail.<sup>3</sup>

8. OBS ultimately proved to be one of TCU's most costly acquisitions. OBS was never profitable and almost immediately experienced financial duress, requiring TCU (through CULS) to infuse more than \$7.1 million of capital into OBS to prevent its financial collapse.

9. Despite knowing in 2007 that TCU was in a precarious financial condition, Addison manipulated TCU's Board to approve a substantial investment in a company that was significantly overvalued, not tested in the credit union industry, and entirely impermissible under Texas law. In defiance of obvious risks and various warnings from inside and outside advisors, Addison abdicated his duties and purposefully misrepresented and concealed material information regarding OBS in order to secure the TCU Board's formal approval of the OBS acquisition on November 17, 2007.

10. Less than four years later, on April 15, 2011, NCUA determined that TCU was in serious financial distress and placed TCU into conservatorship. Under NCUA leadership, TCU immediately began efforts to divest itself of OBS, eventually selling OBS for a mere \$6 million, a \$9 million loss from its original \$15 million purchase price. Together with approximately \$7 million in cash infusions to OBS since 2007, the OBS acquisition ultimately caused TCU over

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<sup>2</sup> Upon information and belief, Addison may have restructured OBS to be acquired by CULS, rather than TCU, in order to avoid OBS from being characterized as a "CUSO" and thereby subject to certain Texas credit union laws with which Addison knew OBS could never comply, among other reasons. *See* Section IV.F, *infra*.

<sup>3</sup> As evidence of this plan, and following the acquisition, Addison placed himself as Chairman of the OBS Board with an irrevocable proxy. In addition, in 2010, Addison sought to purchase OBS following his resignation from TCU.

\$16 million in losses. These losses contributed to TCU's near insolvency and the necessity for the conservatorship.

11. By orchestrating the OBS acquisition, Addison was grossly negligent and breached his fiduciary duties to TCU as its President and CEO. Addison abandoned his fiduciary duties when he ignored the known risk that the OBS acquisition would have on TCU's financial well-being. Addison's knowing misrepresentations, concealments and manipulation of information disclosed to the TCU Board caused TCU to purchase a materially overvalued company in violation of Texas law. TCU's subsequent liquidity crisis, financial demise, and NCUA's 2011 conservatorship evidence the significant damage to TCU and its members resulting from Addison's gross negligence and breach of fiduciary duties.

## **II. JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction pursuant to: (i) 12 U.S.C. § 1789(a)(2), which provides that "[a]ll suits of a civil nature at common law or in equity to which the [NCUA Board] shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy;" and (ii) 28 U.S.C. § 1345, which provides that "the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress."

13. Venue is proper in this district pursuant to 28 U.S.C. §1391(b)(2), because a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in this district.

## **III. PARTIES AND RELEVANT NON-PARTIES**

14. Plaintiff NCUA is an independent agency of the executive branch of the United States government that, among other things, charters and regulates federal credit unions, and

operates and manages the National Credit Union Share Insurance Fund (“NCUSIF”). The NCUSIF insures the deposits of account holders in all federal credit unions and the majority of state-chartered credit unions. NCUA, in conjunction with state regulators, has regulatory authority over state-chartered credit unions that have their deposits insured by the NCUSIF. NCUA is managed by the NCUA Board. *See* Federal Credit Union Act, 12 U.S.C. §§ 1751, 1752a(a) (the “Act”).

15. TCU is a state-chartered consumer credit union with its offices and principal place of business in Richardson, Texas. As a consumer credit union, TCU provides investment and financial services to its members, whom are primarily Texas residents in the Dallas area.

16. On April 15, 2011, NCUA placed TCU into conservatorship, pursuant to its authority under the Act, 12 U.S.C. § 1786(h)(1)(A) and (F). Prior to being placed into conservatorship, TCU was one of the largest consumer credit unions in Texas.

17. Pursuant to 12 U.S.C. § 1787(b)(2)(A), NCUA, as Conservator, succeeded to all rights, titles, powers, and privileges of TCU, including the right to bring the claims asserted in this action. As Conservator, NCUA has all the powers of the members, directors, officers, and committees of TCU. *See* 12 U.S.C. § 1786(h)(8). The NCUA Board may also sue on TCU’s behalf. *See* 12 U.S.C. §§ 1787(b)(2), 1789(a)(2).

18. Defendant David Addison is an individual resident of Collin County, Texas with a last known address of 5970 Aberdeen Place, Frisco, Texas 75034. David Addison may be served with process at his place of residence, or at any other location appropriate for service of process under the Federal Rules of Civil Procedure.

19. Credit Union Liquidity Services, LLC (“CULS”) is not a party to this case but an important entity in connection with the relevant underlying facts. CULS is TCU’s wholly owned

subsidiary CUSO. CULS houses TCU's commercial lending portfolio and, as set forth below, financed the OBS acquisition through TCU's loaned funds.

20. OBS Holdings and its subsidiaries Online Brokerage Services and OBS Financial are companies based in Toledo, Ohio and perform certain brokerage and investment advisory services. OBS ultimately became a subsidiary of OBS Acquisitions Holdings, LLC ("OBS Acquisition"), a CULS subsidiary created as a holding company for OBS.

#### **IV. FACTS**

##### **A. Background of TCU**

21. TCU was founded in Richardson, Texas in 1953 as a credit union for Texas Instruments employees. TCU expanded its membership in 1991 to include employees of several select businesses, and in 1998 expanded once again to adopt a community charter, allowing it to offer membership to citizens in surrounding communities while still servicing its select employee groups.

22. As a state chartered, federally insured credit union, TCU must follow certain federal and state laws established and enforced by the Texas Credit Union Department ("TCUD") and NCUA. As with all credit unions, TCU is a non-profit organization that is owned by its members. Therefore, any loss to TCU is a loss to the membership, which consists primarily of Texas residents in the Dallas area.

23. For fifty years, TCU was a highly profitable credit union offering predominantly traditional credit union services. TCU had a strong relationship with its surrounding communities and the members had confidence that their money was safe and secure in TCU.

24. In 2003, after TCU's longtime CEO left the credit union, TCU hired Addison to expand TCU's services and increase its profitability. Instead, Addison consistently put his own financial and reputational goals ahead of TCU's best interests by entering into costly, extremely

risky business acquisitions and investments that ultimately crippled TCU. In his five and one-half years as CEO, Addison pushed TCU to near insolvency by grossly increasing TCU's asset size but significantly reducing its profitability. Notably, while TCU continued to lose money each year during his tenure, Addison's salary and benefits increased substantially.

**B. Addison Creates a Risky Business Model for TCU**

25. Under Addison's leadership, TCU rapidly expanded its business by investing in various unrelated business lines that were generally untested in the credit union industry. In doing so, Addison created a business model by which he could aggressively invest in unsuccessful businesses that cost the credit union greatly, but also ensured his salary and benefits were not affected.

26. In order to invest in non-traditional businesses, credit unions form subsidiaries called credit union service organizations, or "CUSOs." While the CUSOs themselves are not regulated by NCUA or TCUD, both agencies prohibit credit unions from making certain investments pursuant to Chapter 91 of Title 7 of the Texas Administrative Code. *See, e.g., 7 TEX. ADMIN. CODE § 91.801(e)*. The purpose of this statute is to protect a member-owned, risk adverse, non-profit credit union from exposure to potentially large losses by investing in a CUSO.

27. Before Addison became CEO, TCU had one CUSO – Texans Financial, which was established in 2001. In less than five years after his hiring in 2003, Addison directed TCU to form not less than eight additional CUSOs. In addition to his role as TCU's CEO and President, Addison sat on the boards of six of these newly-formed CUSOs, including CULS. Many of these CUSOs were risky, non-traditional investments, which cost TCU hundreds of



millions of dollars and ultimately led to TCU's near insolvency.<sup>4</sup>

28. Addison utilized the CUSOs to execute his strategy of expanding TCU's reach into risky business areas and volatile commercial loan participations. For example, by forming CULS, which housed TCU's commercial lending portfolio, Addison – as a CULS Board member – was able to invest TCU's money in a nationwide portfolio of large multi-million dollar loans. The loans were so risky that TCU began seeing a sharp increase in defaults almost immediately. By 2007, and despite a revolving line of credit TCU provided to CULS, the impact of this risky commercial lending on CULS's financial stability was evident. Also evident was the fact that Addison's continued push for TCU to heavily invest in these commercial loans would result in substantial losses to TCU.<sup>5</sup>

**C. Addison Targets OBS As TCU's Next Acquisition**

29. OBS, which Addison presented to the TCU Board in 2007 as a TCU acquisition prospect, also contributed to and caused significant losses to TCU.

30. OBS Holdings was originally incorporated in 2000, and provided e-brokerage online services. Together with its subsidiaries, OBS Financial, a registered investment advisor, and Online Brokerage Services, a registered broker-dealer, OBS operated out of Toledo, Ohio.

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<sup>4</sup> Addison utilized his aggressive CUSO acquisition strategy to optimize his salary and benefits. For instance, Addison changed the senior TCU executive compensation formula from a return on assets ("ROA") to a return on equity ("ROE"). Under an ROA formula, in order for Addison's compensation to increase, TCU's profitability would have to increase more rapidly than its asset growth. Based on the quick growth in TCU assets and immediate decline in profitability, Addison would not have received any raises under an ROA formula. However, as a result of adopting an ROE compensation formula, Addison received several raises. In addition to his compensation and benefits as TCU's CEO and President, upon information and belief, Addison was compensated for serving on the CUSO boards. Thus, and upon information and belief, this aggressive CUSO acquisition strategy also increased Addison's income through his receipt of various board member stipends and bonuses. The ROE compensation formula and CUSO board stipends continued during Addison's tenure, even when TCU and its CUSOs were losing significant amounts of money due to Addison's risky business acquisitions and investments.

<sup>5</sup> To demonstrate the material change in TCU's focus on commercial real estate lending, in 2003, TCU's commercial real estate loans comprised approximately 4% of TCU's total loan portfolio. By 2007, and under Addison's leadership, TCU's commercial real estate loans comprised nearly one-half of TCU's total loan portfolio.

31. OBS was a risky business investment because its operation had a high cash burn rate and required costly compliance filings and related regulatory maintenance. In 2007, upon information and belief, OBS was burdened with significant compliance costs and lacked prospects for available cash infusions. OBS was on the brink of financial collapse and was seeking a business partner to invest in OBS and provide needed cash as it struggled to find sufficient capital to cover its operating costs.

32. Upon information and belief, in June 2007, John Henry, a broker representing OBS Holdings, reached out to Addison to pitch OBS to TCU. Despite TCU's growing financial problems at this time, Addison met with OBS representatives on a number of occasions to discuss TCU's potential acquisition of OBS.<sup>6</sup>

33. Upon information and belief, in a June 7, 2007 meeting, John Henry presented materials to Addison regarding OBS's financial condition, including the fact that OBS held approximately \$300 million in assets under management ("AUM").

34. Upon information and belief, AUM was the metric TCU ultimately used to value OBS and determine its purchase price.

35. Upon information and belief, Henry and Addison agreed on a \$15 million purchase price for TCU's acquisition of OBS.

36. On June 29, 2007, OBS executed TCU's letter of intent to purchase OBS, and TCU began its due diligence process.

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<sup>6</sup> Upon information and belief, Addison spent large amounts of TCU's money flying to Toledo, Ohio for meetings with OBS representatives. Upon further information and belief, on at least one occasion, Addison took a private jet to these meetings, which cost TCU over \$14,000 and was never approved by TCU's Board.

**D. Addison's Manipulation of the Due Diligence Process Increased TCU's Risk**

37. Upon information and belief, under Addison's direction, TCU's due diligence process was unusual in several material respects, which exposed TCU to a greater risk of loss in connection with the OBS acquisition.

**1. Addison Kept TCU's Financial And Accounting Groups In The Dark**

38. At Addison's direction, TCU's financial and accounting departments performed little, if any, due diligence for a transaction the size and scope of the OBS acquisition.

39. Upon information and belief, TCU's CFO, Bill Henderson, and his controller, Kerry Whitson, did not participate in any way in the due diligence process.

40. Upon information and belief, Henderson and Whitson never received or reviewed any of OBS's financial information before the acquisition closed.

41. Without the ability to review information regarding OBS's financial condition, TCU's CFO and controller were deprived of the opportunity to assess whether TCU had the financial strength to acquire OBS in light of TCU's growing financial losses and decreased liquidity.

**2. Addison Ignored Riveron's Warnings That OBS Was Substantially Overvalued**

42. Upon information and belief, without any other TCU executive's knowledge or Board approval, Addison hired Riveron Financial ("Riveron") in July 2007 to assist in certain due diligence with respect to, and in advance of, the OBS acquisition.

43. During the course of its due diligence, Riveron specifically cautioned Addison on at least two separate occasions, July 31 and August 28, 2007, that OBS's financial condition, its limited capacity for growth, and industry comparables did not justify its \$15 million purchase price. Riveron also warned Addison that OBS would not survive without TCU's purchase.

44. Upon information and belief, Addison responded that OBS's significant losses, limited cash flow and precarious financial condition were not an issue, and that the OBS acquisition was "strategic."

45. On August 29, 2007, a Riveron representative conducting due diligence on behalf of TCU wrote to TCU's general counsel to reiterate his prior warnings about OBS's inflated purchase price:

I do not think TCU should pay anywhere close to \$15 million for this business. Although strategic in nature, it would likely be a negative net present value decision at this point.

46. Riveron's initial due diligence report, dated September 14, 2007, re-emphasized several material negative warnings about OBS, including:

- OBS's control weaknesses included concentrated authority and limited segregation of managerial duties, review functions, accounting resources, physical controls and safeguard on assets;
- OBS's high concentration of vendors;
- OBS's average net margin was -21%;
- OBS had incurred significant cash losses for the prior two and a half years, and expected to lose additional cash through 2008;
- Company forecasting estimated that OBS would need \$750,000 in working capital to reach profitability; and
- OBS's cash flow breakeven point was approximately \$1.5 billion in AUM, and OBS projected reaching this level in late 2008.

47. Upon information and belief, after reviewing Riveron's September 14, 2007 report, Addison asked Riveron to look at the numbers "in a different way."

48. Upon information and belief, Addison did not disclose Riveron's warnings to the TCU Board or anyone else at TCU. Upon information and belief, the TCU Board was never informed that Riveron believed OBS was substantially overvalued and had previously advised Addison that TCU should not pay \$15 million for OBS.

49. Despite Riveron's warnings and concerns about OBS's significantly inflated value, Addison directed that the OBS acquisition proceed.

**3. Addison Ignored TCU General Counsel's Advice That OBS Was An Impermissible Investment and Violated Texas Law**

50. Upon information and belief, TCU's general counsel, Jeanine Cadena, informed Addison that OBS was an impermissible investment under Section 91.801(e) of the Texas Administrative Code. Despite this information and knowing that the OBS acquisition would result in certain Texas statutory violations, Addison proceeded with the OBS acquisition.

51. Texas law prohibits a credit union from investing in a CUSO unless the credit union has obtained a written legal opinion that the CUSO would not expose the credit union to potential losses greater than its investment in the CUSO. 7 TEX. ADMIN. CODE § 91.801(e)(3). Moreover, a credit union cannot invest in a CUSO that does not produce more than half of its revenue from credit unions or credit union members. 7 TEX. ADMIN. CODE § 91.801(e)(4).

52. Upon information and belief, in violation of Section 91.801(e)(3), Addison did not seek the statutorily required written legal opinion until *after* the OBS acquisition closed, and not until April 2008.

53. Upon information and belief, when Addison finally sought a legal opinion regarding OBS's permissibility, the opinion was based on Addison's material misrepresentations regarding OBS.

54. In addition, and in violation of Section 91.801(e)(4), all or almost all of OBS's revenue was derived from non-credit union customers.

55. Upon information and belief, TCU's purchase of OBS could not have complied with Section 91.801(e)(4), because OBS's business model was specifically designed for banks,

and at the time of the acquisition, was incompatible with credit unions. Therefore, a majority of OBS's revenue could not have been derived from credit unions.

56. Upon information and belief, Addison informed TCU's general counsel that the regulators (*i.e.*, NCUA and/or the Texas Credit Union Department) would give TCU a three year grace period to comply with the statutes.

57. Upon information and belief, Addison's statement regarding a three year grace period is not supported by any state or federal law.

58. Upon information and belief, Addison never informed the TCU Board that OBS was an impermissible investment under Texas law.

59. Upon information and belief, Addison intentionally withheld this information from the TCU Board so that the TCU Board would approve the OBS acquisition.

60. Within a year following the OBS acquisition, TCUD challenged the OBS acquisition as impermissible under Section 91.801 of the Texas Administrative Code, and thereafter instructed TCU to divest itself of OBS, because OBS was an impermissible investment under Texas law.

**E. Based on Addison's Manipulation of Information, Omissions and Misrepresentations, the TCU Board Approved the OBS Acquisition**

61. The OBS acquisition was discussed at several TCU Board Meetings in late 2007.

62. In order to induce the TCU Board to approve the OBS acquisition, Addison made several material misrepresentations and/or omissions regarding OBS.

63. In a November 17, 2007, TCU Board Meeting, Addison presented his President's Report in anticipation of the TCU Board's vote to acquire OBS.

64. In his President's Report, Addison misrepresented to the Board that OBS's AUM was \$800 million.

65. Addison knew, however, that OBS's AUM was actually only \$300 million, based on John Henry's June 2007 representation to Addison regarding OBS's \$300 million AUM and other financial data.

66. Upon information and belief, Addison also misrepresented to the TCU Board that in exchange for a \$15 million purchase price, TCU would own 80% of OBS, the remaining 20% ownership vesting in OBS principals.

67. Upon information and belief, Addison knew and intended that CULS would acquire 95% – not 80% – of OBS following the acquisition.

68. Upon information and belief, Addison misrepresented to the TCU Board that following its acquisition, OBS would be a subsidiary CUSO of TCU.

69. Upon information and belief, Addison knew and intended that OBS would be a subsidiary CUSO of CULS, rather than TCU.

70. Upon information and belief, Addison knew, but failed to inform and concealed from the TCU Board that OBS was an impermissible investment under Texas law.

71. Upon information and belief, Addison knew, but failed to inform and concealed from the TCU Board that Addison had not obtained a written legal opinion that OBS was designed in a manner that would limit TCU's potential exposure to no more than the amount of funds invested in or loaned to OBS, in violation of Section 91.801(e)(3) of the Texas Administrative Code.

72. Upon information and belief, Addison knew, but failed to inform and concealed from the TCU Board that OBS was an impermissible investment under Texas law, because all or almost all of its revenue and activities were unrelated to services for credit unions or members of credit unions, in violation of Section 91.801(e)(4) of the Texas Administrative Code.

73. Upon information and belief, Addison knew, but failed to inform and concealed from the TCU Board that Riveron had determined and advised Addison that OBS was not worth its \$15 million purchase price, and was substantially overvalued.

74. In reliance on Addison's material misrepresentations and/or omissions, an uninformed TCU Board voted in favor of the OBS acquisition on November 17, 2007.

**F. At The Eleventh Hour, Addison Restructured the Deal to Make CULS, Not TCU, the Acquiring Entity**

75. The OBS acquisition closed on December 12, 2007, pursuant to an Agreement and Plan of Merger Between the Parties (the "Merger Agreement").

76. The Merger Agreement departed significantly from the OBS acquisition plan that Addison presented to the TCU Board, and which the TCU Board approved.

77. First, OBS (comprised of OBS Holdings, and its subsidiaries, Online Brokerage Services and OBS Financial) was acquired by CULS's wholly-owned subsidiary formed for purposes of the OBS acquisition, OBS Acquisition Holdings, LLC ("Acquisition Holdings"). Acquisition Holdings was formed as a subsidiary of CULS, not TCU. Thus, in contrast to Addison's presentation to the TCU Board, OBS was acquired by, and became a subsidiary of CULS, not TCU.

78. Upon information and belief, CULS's management and president were not informed or aware that CULS was acquiring OBS until the day before the December closing.

79. Second, Addison previously represented to the TCU Board that to acquire OBS, TCU would invest \$5 million of equity in OBS and provide an additional \$9 million in debt financing.



80. As a result of the acquisition, however, CULS – not TCU – provided OBS with \$5 million in capital contributions and over \$10.8 million in financing.<sup>7</sup>

81. Third, as a result of the acquisition, CULS (through Acquisition Holdings) would own 95% of OBS, and the remaining 5% would be owned by OBS principals John Henry, Kevin Overy and Chris Campbell.

82. By contrast, and upon information and belief, Addison previously represented to the TCU Board that TCU would own no more than 80% of OBS.<sup>8</sup>

83. Addison materially misrepresented, concealed and/or omitted the foregoing information in order to ensure that the TCU Board approved the OBS acquisition.

84. Upon information and belief, by restructuring the OBS acquisition after attaining the TCU Board's approval, Addison intended to avoid certain regulatory supervision and/or requirements OBS would otherwise be subject to as TCU's direct subsidiary CUSO.

85. Upon information and belief, by restructuring the OBS acquisition after attaining the TCU Board's approval, and as a CULS Board member, Addison knew he would be able to better control OBS if it was a CULS subsidiary, rather than a TCU subsidiary.

86. Upon information and belief, by restructuring the OBS acquisition after attaining the TCU Board's approval, Addison intended to hide from the TCU Board the amount of funds required to initially invest in OBS, in addition to the amount of funds that would be required to continue to be invested in OBS following the acquisition.

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<sup>7</sup> While on paper CULS, and not TCU, provided capital contributions and financed the debt to acquire OBS, CULS was contemporaneously servicing debt of its own to TCU through a revolving line of credit. Thus, through its loaned funds to CULS, TCU was essentially funding CULS's acquisition of OBS.

<sup>8</sup> In addition, pursuant to Section 2.27 of the Merger Agreement, no broker or third party could be paid a commission or finder's fee as a result of the OBS acquisition. Upon information and belief, and in violation of the Merger Agreement, Addison approved a \$150,000 commission payment from TCU to John Henry upon closing of the OBS acquisition.

**G. Addison Exposed TCU To Substantial Losses**

87. OBS was never profitable after the acquisition. OBS needed multiple and significant capital infusions in order to support its extraordinary operating expenses. OBS received approximately \$7.1 million in capital infusions from TCU and/or CULS after the December 2007 acquisition.

88. During the 2007 OBS acquisition and continuing afterwards, TCU loaned money to CULS for, among other things, loans to OBS.

89. Within two years after the OBS acquisition, TCU began suffering unsustainable losses.

90. As of December 31, 2007, TCU had a consolidated net income of \$3.8 million. As of December 31, 2009, TCU's consolidated losses were \$51.6 million.

91. TCU's losses were primarily due to the failing CUSOs. CULS caused the greatest loss, in part due to the OBS acquisition. As of December 31, 2010, TCU's net income was negative \$15,216,500 due to unpaid CUSO loans and failed participations in CULS investments. Separately, OBS's net income was negative \$1,634,100.

**H. NCUA Placed TCU Into Conservatorship**

92. In February 2009, Addison resigned from TCU and his positions at all other TCU-controlled entities. However, Addison later contacted TCU to try to acquire OBS by financing the purchase through CULS. TCU promptly rejected this offer.

93. In March 2009, NCUA and TCUD formally directed TCU to sell OBS, because OBS was an impermissible investment under credit union regulations.

94. As of December 31, 2010, TCU was operating at a consolidated net income of negative \$39.4 million and a net worth ratio of 2.75%, rendering the credit union significantly undercapitalized pursuant to the Federal Credit Union Act and NCUA Rules and Regulations.

95. If TCU continued its downward financial trend, without regulatory assistance, it would have become insolvent within the year. Therefore, NCUA placed TCU in conservatorship to protect and conserve TCU's assets and the interests of its members, and to protect the NCUSIF.

96. On April 15, 2011, NCUA conserved TCU and appointed itself as agent for the conservator.

97. Knowing that OBS was a major cause of TCU's precipitous financial decline, under NCUA's direction, TCU staff began immediately to identify a purchaser for OBS. In October 2011, and following a diligent search for a buyer, TCU sold OBS for \$6 million, which was \$9 million less than OBS's purchase price in 2007.

98. As of the date this complaint is filed, TCU remains in conservatorship.

**I. Recoveries In This Action Will Reduce TCU Losses**

99. While TCU has made some progress since its conservatorship almost two years ago, it is still struggling to re-build its capital. Any recoveries in this action will go directly to TCU to help in its rehabilitation efforts. This is significant because TCU members, who are predominantly Texas residents in the Dallas area, can only benefit from TCU's financial growth. With additional funds, TCU could distribute higher dividends to its members and offer a greater array of services at better rates, which in turn will help strengthen and support the local economy. On the other hand, if TCU is unable to regain its financial strength and independence, TCU members will be negatively affected. In addition, the NCUSIF could lose a substantial amount of money, which could affect the larger credit union industry. Recoveries from this action will go back to the Dallas community and its residents and could help prevent a loss to the credit union industry.

**V. CAUSES OF ACTION**

**A. Count One – Gross Negligence**

100. The allegations set forth in the foregoing Paragraphs are expressly incorporated as if fully set forth herein.

101. In conscious indifference to TCU's welfare, David Addison was grossly negligent by (i) ignoring various warnings from outside financial advisors that OBS was overvalued, and not worth its \$15 million purchase price; (ii) ignoring TCU general counsel's advice that the OBS acquisition violated Texas law; and (iii) misrepresenting, manipulating, concealing and/or omitting material information to or from TCU's Board in connection with the OBS acquisition, thereby causing the TCU Board to approve the OBS acquisition based on incomplete, inaccurate and/or materially false information. Addison's acts and/or omissions were intentional, reckless, and exhibited an extreme degree of risk to TCU and its members.

102. Addison's concealment and/or misrepresentation of material information presented to the TCU Board and his conscious disregard of the known risks the OBS acquisition would have on TCU involved an extreme degree of risk, considering the probability and magnitude of the potential harm to TCU. Addison, based on his experience in the credit union industry, the due diligence provided to him, the credit union's weak financial condition and counsel's advice, knew or had to have known the impact the OBS acquisition would have on the financial stability of TCU and the potential harm caused to TCU and its members. Despite knowing these risks, Addison proceeded with and orchestrated the OBS acquisition.

103. Addison's complete lack of care as to this extreme degree of risk to TCU as a result of the OBS acquisition establishes that Addison's acts or omissions were the result of an actual conscious indifference as to TCU's welfare, as well as the welfare of its members. Based on the information given to Addison from various financial advisors and TCU's general counsel,

as well as his own experience and knowledge, Addison had an actual awareness of this extreme risk created by his conduct.

104. Addison was grossly negligent in his management of TCU by failing to properly evaluate and address the financial problems associated with the OBS acquisition. Addison's conduct, misrepresentations and omissions, when viewed objectively at the time, involved an extreme degree of risk considering the probability and magnitude of the potential harm to TCU.

105. The above-referenced actions or omissions by Addison were grossly negligent.

106. As a result of Addison's wrongful conduct, misleading and erroneous statements, willful omissions and reckless actions, TCU was substantially damaged in an amount to be determined at trial.

**B. Count Two – Breach Of Fiduciary Duties Of Care, Full Disclosure and Obedience**

107. The allegations set forth in the foregoing Paragraphs are expressly incorporated as if fully set forth herein.

108. As TCU's president and CEO, Addison owed TCU fiduciary duties of care, full disclosure and obedience.

109. In particular, Addison owed TCU's Board of Directors the duty of full and fair disclosure regarding the OBS acquisition. He breached this duty by failing to make the following material disclosures: (i) the several negative warnings regarding OBS from Riveron; (ii) Riveron's opinion that OBS was substantially overvalued, and worth only about half of its \$15 million price tag; (iii) that OBS was an impermissible investment under applicable law and credit union regulations; (iv) that OBS only had \$300 million AUM, not \$800 million as Addison represented; (v) that CULS, not TCU, would be the acquiring entity for OBS; and (vi) that CULS (through its subsidiary) would own a riskier 95% of OBS, rather than 80% as Addison previously represented to TCU's Board.

110. Addison breached his duties of care and full disclosure when he made material misrepresentations to, and failed to report or concealed material information from TCU's Board of Directors during his presentations regarding the OBS acquisition.

111. Addison breached his fiduciary duty of obedience when, through his conduct, misrepresentations and omissions, he caused TCU and CULS to enter into the OBS acquisition when he knew the transaction was legally impermissible under applicable statutes and regulations, including the Texas Administrative Code Section 91.801.

112. Addison made material misrepresentations and withheld material information from the TCU Board with the intent that an uninformed and/or misinformed Board would vote in favor of the OBS acquisition.

113. As detailed and described herein, Addison's grossly negligent conduct, misrepresentations and omissions are not protected by the business judgment rule.

114. As a result of Addison's misrepresentations and his failure to provide full disclosure regarding the OBS acquisition in breach of his fiduciary duties, TCU suffered damages in an amount to be determined at trial.

## **VI. JURY DEMAND**

115. NCUA hereby demands a trial by jury for all issues so properly triable.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, the National Credit Union Administration Board, as Conservator of Texans Credit Union, respectfully requests that upon trial of this matter, this Court enter a judgment against David Addison:

(1) awarding monetary, compensatory and exemplary damages in amounts to be proven and determined at trial;

- (2) awarding pre- and post-judgment interest on the foregoing amounts at the maximum rate permitted by contract, law, or equity;
- (3) awarding costs of suit, including reasonable attorneys' fees; and
- (4) awarding such other and further relief to which NCUA has shown itself entitled at law and at equity.

Dated this 20th day of December, 2012.

Respectfully submitted,

**MUNSCH HARDT KOPF & HARR, P.C.**

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